

or execute a bilateral policy, program, order, or contract of any kind to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned company unless such activities are specifically authorized by a law enacted after the date of enactment of this division."

Pub. L. No. 112-10, 1340.

OSTP informed us that it incurred costs of approximately \$3,500 to participate in the week's activities, including the cost of staff time for nine employees preparing for and participating in the discussions, as well as the cost of the dinner OSTP hosted on May 8. OSTP Response, at 5.

#### DISCUSSION

At issue in this opinion is whether OSTP violated section 1340's proscription, and, if so, whether the agency violated the Antideficiency Act.

As with any question involving the interpretation of statutes, our analysis begins with the plain language of the statute. *Jimenez v. Quarterman*, 555 U.S. 113 (2009). When the language of a statute is "clear and unambiguous on its face, it is the plain meaning of that language that controls." *B-307720*, Sept. 27, 2007; *B-306975*, Feb. 27, 2006; see also *Lynch v. Alworth-Stephens Co.*, 267 U.S. 364, 370 (1925).

The plain meaning of section 1340 is clear. OSTP may not use its appropriations to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned companies. Here, OSTP's participation in the Innovation Dialogue and S&ED contravened the appropriations restriction. The Director opened the Innovation Dialogue and moderated discussions therein. OSTP staff prepared materials for and attended the discussions. OSTP then invited U.S. and Chinese officials to a dinner that it paid for using its appropriation. Finally, OSTP participated in the S&ED, during which the Director spoke on multiple occasions, including on climate science. OSTP did not identify, nor are we aware of, any specific authority to do so that was enacted after the date of the Continuing Appropriations Act, 2011.

OSTP does not deny that it engaged in activities prohibited by section 1340. OSTP Response; August Conversation. OSTP argues, instead, that section 1340, as applied to the events at issue here, is an unconstitutional infringement on the President's constitutional prerogatives in foreign affairs. OSTP Response, at 1; August Conversation; Letter from Director, OSTP, to the Speaker of the House of Representatives, Re: Section 1340 of the Department of Defense and Full-Year Continuing Appropriations Act of 2011 (May 16, 2011) (OSTP May 16 Letter). OSTP claims that section 1340 is "unconstitutional to the extent its restrictions on OSTP's use of funds would bar the President from employing his chosen agents for the conduct of international diplomacy." OSTP Response, at 1. OSTP asserts that the President has "exclusive constitutional authority to determine the time, place, manner, and content of diplomatic communications and to select the agents who will represent the President in diplomatic interactions with foreign nations." OSTP May 16 Letter. OSTP argues that, for this reason, Congress may not "use its appropriations power to infringe upon the President's exclusive constitutional authority in this area." *Id.*

It is not our role nor within our province to opine upon or adjudicate the constitutionality of duly enacted statutes such as section 1340. See *B-300192*, Nov. 13, 2002; see also *B-306475*, Jan. 30, 2006. In our view, legislation that was passed by Congress and signed by the President, thereby satisfying the Constitution's bicameralism and present-

ment requirements, is entitled to a heavy presumption in favor of constitutionality. *B-302911*, Sept. 7, 2004. See *Bowen v. Kendrick*, 487 U.S. 589, 617 (1988). Determining the constitutionality of legislation is a province of the courts. U.S. Const. art. III, §2. Cf. *Fairbank v. United States*, 181 U.S. 283, 285 (1901). Therefore, absent a judicial opinion from a federal court of jurisdiction that a particular provision is unconstitutional, we apply laws as written to the facts presented. See *B-114578*, Nov. 9, 1973. In 1955, for example, we stated that we "accord full effect to the clear meaning of an enactment by the Congress so long as it remains unchanged by legislative action and unimpaired by judicial determination." *B-124985*, Aug. 17, 1955. We see no reason to deviate here. Indeed, we are unaware of any court that has had occasion to review the provision, let alone adjudicate its constitutionality, nor did OSTP advise of any judicial determination or ongoing litigation.

As a consequence of using its appropriations in violation of section 1340, OSTP violated the Antideficiency Act. Under the Antideficiency Act, an officer or employee of the U.S. Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation. 31 U.S.C. §1341. See *B-300192*, Nov. 13, 2002. If Congress specifically prohibits a particular use of appropriated funds, any obligation for that purpose is in excess of the amount available. 71 Comp. Gen. 402 (1992); 62 Comp. Gen. 692 (1983); 60 Comp. Gen. 440 (1981). By using its fiscal year 2011 appropriation in a manner specifically prohibited, OSTP violated the Antideficiency Act. Accordingly, OSTP should report the violation as required by the act.

Sincerely,

LYNN H. GIBSON,  
General Counsel.

MS. ERIN TREASTER

HON. LOU BARLETTA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 2011

Mr. BARLETTA. Mr. Speaker, I rise to honor Erin M. Treaster for her performance on the basketball court and soccer field, and as she is accepted into the Plains Sports Hall of Fame in Northeastern Pennsylvania.

A graduate of Bishop Hoban High School, Ms. Treaster was a four-year starter on both the soccer and basketball teams. In both sports she excelled, as she was selected as an all conference performer. She was also selected as the most valuable player of the Wyoming Valley Soccer Conference, and she was selected to the All-State Soccer team.

While attending college at Bloomsburg University, Ms. Treaster was a four-year starter for the Huskies in both basketball and soccer. In soccer, she was selected to the Pennsylvania State Athletic Conference (PSAC) second team from 1995 through 1998, a regional All-American in 1996 and 1997, and ranks as the 10th overall soccer assist leader in Bloomsburg University history.

In basketball, Ms. Treaster's performance was equally impressive. She was selected All-Conference PSAC East Rookie of the Year in 1995-1996. With 456 assists, she is the all-time leader in the school's history, and the eighth all-time leader in steals with 202.

Mr. Speaker, it is my pleasure to officially congratulate Ms. Erin M. Treaster for all of her

accomplishments, and especially her induction into the Plains Sports Hall of Fame.

#### VETERANS OPPORTUNITY TO WORK ACT OF 2011

SPEECH OF

HON. DIANE BLACK

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 2011

Mrs. BLACK. Madam Speaker, as our servicemembers return home from Iraq and Afghanistan, Congress must continue to focus on assisting in their transition back to civilian life. For many of these individuals, the wounds of war are not easily forgotten and it is imperative that we stand by these soldiers.

As the wife, mother and daughter of servicemen I have a strong appreciation for the contributions of our United States military personnel and I am a constant advocate for improving military and veteran benefits. That is why I am a co-sponsor of H.R. 2433, the "Veterans Opportunity to Work Act of 2011."

H.R. 2433 provides unemployed veterans and active duty members who are about to retire with comprehensive training opportunities and employment assistance. It achieves these goals by: extending training benefits to unemployed veterans to teach them new skills for high-demand jobs; making career and transition courses mandatory for servicemembers leaving the military; strengthening re-employment protections for National Guard and Reservists; and improving licensing and credentialing processes for new veterans.

Recently I held a veterans job fair in my district and got to meet with some of these brave men and women as they looked for jobs. It is an honor to be able to help veterans while at home and this bill serves as a chance for us to help our veterans back home from Washington, DC.

Ensuring that our servicemen are well taken care of is one of our Nation's greatest responsibilities and I am pleased we will take up legislation today that will do just that.

#### GREATER NEW BEDFORD COMMUNITY HONORS NATE MEDEIROS

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 2011

Mr. FRANK of Massachusetts. Mr. Speaker, there is no way that those of us who have stayed at home can discharge the debt we owe to the men and women who put their lives and safety at risk as members of the Armed Services, but it is important that we do what we can to show that we understand how deep that debt is. On October 23, I will have the privilege of participating in an effort to do that in the town of Fairhaven, Massachusetts, where the Greater New Bedford Community will gather to honor Army Pfc. Nathan Medeiros. Pfc. Medeiros is recovering from serious shrapnel and burn wounds he sustained from a roadside bomb last month in Afghanistan. His friends and neighbors will be gathering to show how deeply they honor his courage and appreciate his sacrifice.